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Right of peoples to self-determination

# Right of peoples to self-determination

## Report of the Secretary-General

*Summary*

In its resolution 70/143, the General Assembly requested the Secretary-General to submit a report to the Assembly at its seventy-first session on the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with that request.

The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the main organs of the United Nations and those of its human rights mechanisms and regional organizations since the submission of the last report on this question (A/70/314).

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# I. Introduction

1. The General Assembly, in its resolution 70/143, reaffirmed that the universal realization of the right to self-determination was a fundamental condition for the effective guarantee and observance of human rights.

2. The present report is submitted in accordance with paragraph 6 of resolution 70/143, in which the General Assembly requested the Secretary-General to report to it on this question at its seventy-first session.

3. The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the main organs of the United Nations and of its human rights mechanisms since the submission of the last report (A/70/314). It summarizes the main observations relating to the right to self-determination made by the Secretary-General in his latest report to the Security Council on the situation concerning Western Sahara (S/2016/355). It reviews resolutions of the General Assembly that refer to the right of peoples to self-determination, including in the context of Non-Self-Governing Territories and the use of mercenaries, as well as with regard to the right of the Palestinian people to self-determination. It also summarizes developments in regional organizations during the reporting period.

4. The report refers to the consideration of the issue by the Human Rights Council, both in resolutions and through the reports submitted to the Council by special procedures mandate holders.

5. The report also includes information on the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which is based on their consideration of periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in respect of the implementation of the right of all peoples to self-determination guaranteed in common article 1 of the two Covenants.

# II. Security Council

6. In accordance with Security Council resolution 2218 (2015), the Secretary-General submitted a report to the Security Council on the situation in Western Sahara (S/2016/355). The report recalled the visit of the Secretary-General to the region from 3 to 7 March 2016, during which he sought to make his own contribution to the negotiating process, paid tribute to the United Nations Mission for the Referendum in Western Sahara (MINURSO) and its personnel, witnessed the humanitarian situation on the ground and discussed other issues of concern.

7. The report described the situation in Western Sahara as remaining generally stable. West of the berm. Public life proceeded peacefully and included gatherings at social events in urban areas without major incident. On the occasions MINURSO was able to witness, an extensive presence of Moroccan security forces was noted. One potential violation of the ceasefire, as defined in military agreement No. 1, was reported. The Secretary-General noted that, according to various sources, the Moroccan authorities continued to routinely prevent or disperse gatherings focused

on the right to self-determination, discriminatory employment policies and other socioeconomic issues.

8. The Secretary-General noted that the Office of the High Commissioner for Human Rights (OHCHR) deployed a technical mission to the Western Saharan refugee camps near Tindouf, Algeria, from 29 July to 4 August 2015. The mission was preceded by a similar mission to Laayoune and Dakhla in Western Sahara from 12 to 18 April 2015. The missions enabled OHCHR to gather first-hand information and gain greater understanding of the human rights situation and challenges in the region and to explore forms of future cooperation to ensure effective human rights protection for all (ibid., para. 65). The Secretary-General also indicated that on 4 September 2015, municipal and, for the first time, regional elections were held in Morocco and in Western Sahara west of the berm, despite the contested status of the entire territory. Insofar as MINURSO could ascertain, the elections were conducted without incident. However, the Secretary-General recalled his regret at the absence of genuine negotiations on the definitive status of Western Sahara "without preconditions and in good faith to achieve a mutually acceptable political situation, which will provide for the self-determination of Western Sahara." The Secretary-General stated that the mutually acceptable political solution should include resolution of the dispute over the status of Western Sahara, including through agreement on the nature and form of the exercise of self-determination (ibid., paras. 8, 9, 65 and 91).

9. The Secretary-General concluded that growing frustration among Western Saharans, coupled with the expansion of criminal and extremist networks in the Sahel-Sahara region, presented increased risks for the stability and security of the region, which would be mitigated by a settlement of the Western Sahara conflict. He reiterated his call on the parties to seriously engage with the Personal Envoy and to sustain and intensify their efforts to negotiate a "mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara", as requested by Security Council in its resolution 2218 (2015) (ibid., paras. 88 and 91).

10. The Security Council considered the report of the Secretary-General on the situation concerning Western Sahara and adopted resolution 2285 (2016) on 29 April 2016. In the resolution, the Security Council regretted that the ability of MINURSO to fully carry out its mandate had been affected, as the majority of its civilian component, including political personnel, could not perform their duties within the Mission's area of operations, and emphasized the urgent need for MINURSO to return to full functionality. The Council also called upon the parties to continue negotiations under the auspices of the Secretary-General, without preconditions and in good faith, taking into account the efforts made since 2006 and subsequent developments, with a view to achieving a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations. The Council reaffirmed its commitment to assist the parties in this regard and noted the role and responsibilities of the parties in this respect.

# III. General Assembly

11. During the reporting period, in addition to its resolution on the universal realization of the right of peoples to self-determination (resolution 70/143), the General Assembly adopted a number of resolutions in which it directly addressed this issue. The resolutions concern Non-Self-Governing Territories, the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and the right of the Palestinian people to self-determination. In addition, in its resolution 70/149, the General Assembly affirmed that a democratic and equitable international order requires, inter alia, the realization of the right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development.

## A. Non-Self-Governing Territories

12. Common article 1.3 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights makes specific reference to States parties having responsibility for the administration of Non-Self-Governing and Trust Territories and requires that they promote the realization and respect of the right of self-determination, in conformity with the provisions of the Charter of the United Nations.

13. In its resolution 70/95, the General Assembly reaffirmed the right of the peoples of the Non-Self-Governing Territories to self-determination and their right to the enjoyment of their natural resources and to dispose of those resources in their best interest. It also reaffirmed the responsibility of the administering Powers under the Charter to promote the political, economic, social and educational advancement of the Non-Self-Governing Territories. The Assembly expressed its concern about activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations, in the Caribbean, the Pacific and other regions, and of their human resources, to the detriment of their interests, and in such a way as to deprive them of their right to dispose of those resources. In its resolution 70/96, the Assembly reaffirmed that the recognition by United Nations organs of the legitimacy of the aspirations of the peoples of the Non-Self-Governing Territories to exercise their right to self-determination entailed, as a corollary, the extension of all appropriate assistance to those peoples. In its resolution 70/231, it requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to seek suitable means for the immediate and full implementation of the Declaration and to carry out the actions approved by the Assembly regarding the Second and Third International Decades for the Eradication of Colonialism in all territories that had not yet exercised their right to self-determination.

14. In its resolution 70/98 on the question of Western Sahara, the General Assembly expressed support for the process of negotiations initiated by the Security Council to achieve a just, lasting and mutually acceptable political solution, which would provide for the self-determination of the people of Western Sahara, and commended the efforts undertaken by the Secretary-General and his Personal Envoy for Western Sahara in that respect.

15. In its resolution 70/99 on the question of New Caledonia, the General Assembly expressed the view that adequate measures for conducting the consultations on access to full sovereignty, including a just, fair, credible and transparent electoral roll, as provided in the Nouméa Accord were essential for the conduct of a free, fair and genuine act of self-determination consistent with United Nations principles and practices. In this regard, it called upon the administering Power to consider developing an education programme to inform the people of New Caledonia about the nature of self-determination so that they may be better prepared to face a future decision on the matter. The Assembly urged all the parties involved, in the interest of the people of New Caledonia and within the framework of the Nouméa Accord, to maintain their dialogue in a spirit of harmony and mutual respect in order to continue to promote a framework for the peaceful progress of the Territory towards an act of self-determination in which all options were open and which would safeguard the rights of all sectors of the population, based on the principle that it is for the populations of New Caledonia to choose how to determine their destiny.

16. In its resolution 70/100 on the question of French Polynesia, the General Assembly reaffirmed that it was ultimately for the people of French Polynesia to determine freely their future political status. The Assembly called upon the administering Power, in cooperation with the territorial Government and appropriate bodies of the United Nations system, to develop political education programmes for the Territory in order to foster an awareness among the people of French Polynesia of their right to self-determination, and to intensify its dialogue with French Polynesia in order to facilitate rapid progress towards a fair and effective self-determination process, under which the terms and timelines for an act of self-determination would be agreed.

17. Self-determination issues were also raised in relation to Tokelau. In its resolution 70/101, the General Assembly noted the intention of the Territory to further review its National Strategic Plan in order to determine development and other priorities beyond 2015, including consideration of the issue of self-determination and how the Territory would address a possible referendum on self-determination in cooperation with the administering Power.

18. In its resolution 70/102 on the questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands and the United States Virgin Islands, the General Assembly reaffirmed that, in the process of decolonization, there was no alternative to the principle of self-determination, which was also a fundamental human right, and that it was ultimately for the peoples of the Territories themselves to determine freely their future political status in accordance with the relevant provisions of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples and relevant resolutions of the General Assembly. It reiterated its long-standing call for the administering Powers, in cooperation with the territorial Governments and appropriate bodies of the United Nations system, to develop political education programmes for the Territories in order to foster awareness among the people of their right to self-determination in conformity with the legitimate political status options.

19. In this regard, the General Assembly reiterated its request that the Human Rights Committee collaborate with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, within the framework of its mandate on the right to self-determination as contained in the International Covenant on Civil and Political Rights, with the aim of exchanging information.

### B. The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

20. In its resolution 70/142, the General Assembly condemned mercenary activities in developing countries, in particular in areas of conflict, and the threat they posed to the integrity of and respect for the constitutional order of those countries and the exercise of the right of their peoples to self-determination. It stressed the importance for the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination of looking into sources and root causes, as well as the political motivations of mercenaries and for mercenary-related activities. It called on OHCHR to publicize the adverse effects of the activities of mercenaries on the right of peoples to self-determination and to render advisory services to affected States, as appropriate.

### C. The right of the Palestinian people to self-determination

21. The right of the Palestinian people to self-determination, including the right to their independent State of Palestine, was reaffirmed by the General Assembly in its resolution 70/141. The Assembly also urged States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.[1]

22. In its resolution 70/12, the General Assembly, having considered the report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, requested the Committee, inter alia, to continue to exert all efforts to promote the realization of the inalienable rights of the Palestinian people, including their right to self-determination.

23. The economic aspect of the right to self-determination, namely, the right of peoples to sovereignty over their natural resources, was reaffirmed by the General Assembly with regard to the Palestinian people in its resolution 70/225.

## IV. Economic and Social Council

24. In resolution 2015/16, the Economic and Social Council recommended a number of measures that specialized agencies and international institutions associated with the United Nations should adopt in support of Non-Self-Governing Territories. The Council reaffirmed that the recognition by the General Assembly,

[1] The General Assembly also called for the realization of the Palestinian people's human rights, including the right to self-determination, in resolution 70/15, para 21; resolution 70/87, preambular paragraph 18; and resolution 70/90, para. 16.

the Security Council and other United Nations organs of the legitimacy of the aspirations of the peoples of the Non-Self-Governing Territories to exercise their right to self-determination entailed, as a corollary, the extension of all appropriate assistance to those peoples, on a case-by-case basis.

# V. Human Rights Council

## A. Resolutions

25. At its twenty-ninth session, held from 15 June to 3 July 2015, the Human Rights Council adopted resolution 29/15 on human rights and climate change. The Council emphasized that the adverse effects of climate change had a range of implications, both direct and indirect, for the effective enjoyment of human rights, including for the right to self-determination.

26. At its thirtieth session, held from 14 September to 2 October 2015, the Human Rights Council adopted resolution 30/6 on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Council condemned mercenary activities and the threat they posed to the integrity of and respect for the constitutional order of countries and the exercise of the right to self-determination. It also urged all States to take the necessary steps and to exercise the utmost vigilance against the threat posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right of peoples to self-determination.

27. In its resolution 30/2 on human rights and unilateral coercive measures, adopted at the same session, the Human Rights Council reaffirmed the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their own economic, social and cultural development.

28. At its thirty-first session, held from 29 February to 24 March 2016, the Human Rights Council addressed the question of the realization of the right of the Palestinian people to self-determination in its resolutions 31/33, 31/34 and 31/36. In its resolution 31/33, the Council reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine. It confirmed that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination, and urged all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right.

29. In its resolution 31/34, the Human Rights Council stressed the need for Israel to withdraw from the Palestinian territory occupied since 1967, including East Jerusalem, so as to enable the Palestinian people to exercise their universally recognized right to self-determination. In its resolution 31/36, the Council further called upon Israel, the occupying Power, to put an end to all of the human rights violations linked to the presence of settlements, especially of the right to self-determination, and to fulfil its international obligations to provide effective remedy for victims.

## B. Special procedures

30. In her report to the seventieth session of the General Assembly, the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples addressed the impact of international investment and free trade agreements on the human rights of indigenous peoples. In this regard, the Special Rapporteur stated that the inability of indigenous peoples to contribute to the drafting of legal agreements that affect them was a violation of their right to self-determination, as provided for in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (see A/70/301, para. 37). In her report to the thirtieth session of the Human Rights Council, she noted that self-determination was a cornerstone of the Declaration and was defined as both a choice to determine political status and the right to have autonomy over economic, social and cultural development. She considered that self-determination was a right in itself and that it had been conceptualized as a precondition for the fulfilment of other rights. She further highlighted violations of the broad right to self-determination of indigenous peoples that were historically and currently endemic, including gross and sustained assaults on the cultural integrity of indigenous peoples, denigration and non-recognition of customary laws and governance systems, the failure to develop frameworks that allow indigenous peoples appropriate levels of self-governance and practices that strip indigenous peoples of autonomy over land and natural resources (see A/HRC/30/41, paras. 11 and 12). She recommended, inter alia, that States balance respect for the right to self-determination of indigenous communities with their responsibility to protect indigenous women and girls in their capacity as national citizens and rights-bearers (ibid., para. 79 (c)).

31. The Expert Mechanism on the Rights of Indigenous Peoples presented its summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/30/54) to the Human Rights Council at its thirtieth session. In particular, the summary provides details on the responses from States regarding specific legislative, policy or administrative measures relating to self-determination and autonomy.

32. In his report to the Human Rights Council of 8 July 2015, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes stated that protecting the ability of individuals to exercise consent to having hazardous substances enter their bodies is indivisible, interdependent and interrelated to numerous human rights, including, among others, the rights to self-determination, human dignity and health as well as freedom from discrimination. He also stated that indigenous

peoples have the right to give their free, prior and informed consent about the exploitation of resources on their land and about the storage and disposal of hazardous substances in their lands or territories and other rights that require information about hazardous substances (see A/HRC/30/40, paras. 27 and 28).

33. In its report to the General Assembly of 2 November 2015, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination recalled that, initially, the right of peoples to self-determination had developed in the context of Non-Self-Governing territories and peoples who were subjected to alien subjugation, domination and exploitation in such a way as to create a legal right to independence. It noted, however, that in its contemporary manifestation, the right of peoples to self-determination encompasses political struggles for greater democracy and human rights, in particular as a manifestation of the so-called internal right to self-determination, as distinct from the external right to self-determination in the sense of a legal right to independence. The Working Group noted that foreign fighters did not inevitably impede the right to self-determination and that foreign fighters might be motivated to join a non-State armed group to help them exercise the right to self-determination, or fight on behalf of armed groups claiming to exercise this right (see A/70/330, paras. 37, 38 and 40).

34. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights presented a report to the Human Rights Council in which he considered, inter alia, how to eliminate or mitigate the negative impact of unilateral coercive measures on human rights and to provide redress for victims and guidance as provided by international law, human rights law and humanitarian law. He stated that the most obvious answer was to renounce unilateral coercive measures as a tool of foreign policy in recognition of the overarching principle of self-determination proclaimed in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (see A/HRC/30/45). In his report to the General Assembly, the Special Rapporteur noted that respect for self-determination is germane to the rule establishing that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind (see A/70/345, para. 28).

## VI. Human rights treaty bodies

35. Article 1, paragraph 1, of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights affirms the right of all peoples to self-determination. It is in this context that the right to self-determination has been addressed by the Human Rights Committee[2] and the Committee on Economic, Social and Cultural Rights in their consideration of the periodic reports of States parties. The relevant concluding observations adopted during the period under review are highlighted below.

[2] See also Human Rights Committee, general comment No. 12 (see HRI/GEN/1/Rev.9 (Vol. I)).

## A. Concluding observations by the Human Rights Committee

36. During the reporting period, the Human Rights Committee addressed the right to self-determination, including of indigenous peoples, in two concluding observations, adopted at its 114th and 116th sessions.

37. In its concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela (CCPR/C/VEN/CO/4, para. 21), the Committee took note with satisfaction of the extensive legal framework developed by the State party in the area of indigenous peoples' rights, which included the recognition of the right to be consulted. It regretted, however, that it had not received sufficient information about the implementation of the right to prior consultation in relation to the granting of exploration and resource development licences in their territories. The Committee was concerned about the slow progress of the land demarcation process as well as about information it had received which indicated that some indigenous peoples had been victims of acts of violence committed by State and non-State actors. The Committee recommended that the country take the necessary measures to, inter alia, ensure that the necessary prior consultations are held with indigenous peoples to obtain their free, prior and informed consent before any measure is adopted or implemented that may substantively compromise their way of life and culture; to expedite and complete the demarcation of indigenous lands as soon as possible; and to provide effective protection for indigenous peoples against all acts of violence and ensure that the perpetrators of such acts are brought to justice and duly punished and that victims obtain appropriate redress.

38. In its concluding observations on Sweden (CCPR/C/SWE/CO/7, paras. 38 and 39), the Committee welcomed the commitment of Sweden to further advancing the interests of the Sami people and to realizing their right to self-determination, and acknowledged the changes in the constitutional and legal framework in this regard. It remained concerned, however, about the slow progress in concluding negotiations for the adoption of the Nordic Sami Convention, the limited resources allocated to the Sami Parliament, the scope of the duty to consult with representatives of the Sami people in connection with extractive and development projects and the difficulties faced by Sami in securing rights over lands and resources. The Committee therefore recommended that Sweden contribute efficiently to the adoption, without undue delay, of the Nordic Sami Convention; ensure that the Sami Parliament is provided with adequate resources to enable it to fulfil its mandate effectively; review existing legislation, policies and practices regulating activities that may have an impact on the rights and interests of the Sami people; and grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and provide for a suitable burden of proof in cases regarding those rights.

## B. Concluding observations by the Committee on Economic, Social and Cultural Rights

39. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination during its fifty-sixth, fifty-seventh and fifty-eighth sessions in its concluding observations on Guyana, Iraq, Morocco, Kenya, Namibia, Angola, Honduras and Sweden with respect to the rights of indigenous peoples.

40. In its concluding observations on the report of Guyana (see E/C.12/GUY/CO/2-4, paras. 14-17), the Committee welcomed the adoption of the Amerindian Act, 2006, but remained particularly concerned at the limitations of the Act, including the broad range of exceptions that allowed mining and logging activities by external investors without the free, prior and informed consent of the affected indigenous peoples and the absence of effective legal remedies by which indigenous peoples may seek and obtain restitution of their lands that are held by third parties. The Committee therefore recommended that Guyana ensure that the Amerindian people's rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources. The Committee was also concerned about the problems faced by Amerindian people in obtaining their land titles, including delays in the process, lack of inspections, and court rulings that support mining activities without obtaining the free, prior and informed consent of the affected communities, and made recommendations in this regard.

41. In its concluding observations on the report of Iraq (see E/C.12/IRQ/CO/4, paras. 13 and 14), the Committee expressed concern about the persistence of land disputes between Assyrians and the Kurdistan Regional Government and recommended that Iraq take measures to resolve the disputes and to put an end to the frequent expropriation of lands belonging to Assyrians for investment purposes. It also called on Iraq to ensure that judicial decisions ordering the return of lands to Assyrians were enforced.

42. In its concluding observations on the report submitted by Morocco (see E/C.12/MAR/CO/4, paras. 5 and 6), the Committee reiterated its concern about the failure to find a solution to the issue of the right self-determination of Western Sahara, the precarious situation of Sahraouis refugees upon their return and the fact that the Sahraouis' right to participate in the use and exploitation of natural resources still was not respected. The Committee recommended that Morocco strengthen its efforts to find a solution to the dispute regarding Western Sahara, under the auspices of the United Nations and take measures to ensure that the rights of Sahraouis refugees were respected upon their return, that respect for the principle of prior, free and informed consent was guaranteed in relation to the Sahraouis and that the Sahraouis were able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.

43. In its concluding observations on the report of Kenya (see E/C.12/KEN/CO/2-5, paras. 13-16), the Committee expressed its regret that negotiations for the economic partnership agreement between the East African Community States and the European Union had not been preceded by an assessment of its impact on the enjoyment of economic, social and cultural rights, and recommended that Kenya seize the opportunity of the consultations that would take place prior to ratification to identify such negative impacts and adopt the measures necessary to mitigate them. It also expressed its concern that the implementation of the decision of the African Commission on Human and Peoples' Rights relating to the Endorois had been long delayed, despite acceptance of the decision of the Commission. While noting the establishment of the task force on the implementation of the decision, it regretted that the Endorois were not represented on the task force and had not been sufficiently consulted on its work. The Committee therefore recommended that the State party implement the decision without further delay and ensure that the

Endorois are adequately represented and consulted at all stages of the implementation process, and that a mechanism be set up, with the active participation of the Endorois, to facilitate and monitor implementation.

44. In its concluding observations on the report of Namibia (see E/C.12/NAM/CO/1, paras. 15 and 16), the Committee expressed concern that the legislation of Namibia did not recognize communities that had self-identified as indigenous peoples and that indigenous peoples' traditional uses and occupation of land were not recognized and protected. It therefore recommended, inter alia, that Namibia adopt remedial legislation and ensure the respect of the principle of obtaining free, prior and informed consent in development projects.

45. In its concluding observations on the report of Angola (see E/C.12/AGO/CO/4-5, paras. 19 and 20), the Committee expressed concern that the State party did not recognize indigenous peoples living in its territory. It also expressed concern about reported discrimination in access to food, water, health and education experienced by indigenous peoples, combined with an inadequate response from the State party. The Committee was further concerned that development activities were impeding indigenous peoples from accessing their lands, and about the lack of a legal framework for consultation with the affected communities prior to embarking on such activities. The Committee therefore recommended, inter alia, that Angola adopt legislation to recognize the status of indigenous peoples living in Angola and guarantee their rights, adopt specific measures to improve access to social services by indigenous peoples and ensure that licensing agreements with businesses provide for adequate compensation of the affected communities and that the free, prior and informed consent of indigenous peoples is sought before granting licences to businesses for economic activities on territories traditionally owned, occupied or otherwise used by indigenous people.

46. In its concluding observations on the report of Honduras, the Committee expressed concern about reports of the breach of the right to prior consultation to obtain free, prior and informed consent of indigenous peoples in relation to decisions that may affect them. Concern was also expressed about the fact that often their opinion was not taken into account when permits were granted for the exploitation of natural resources or other development projects. The Committee noted with concern that, despite the efforts made by the State party regarding the demarcation of indigenous lands, the protection of the right of indigenous peoples to freely dispose of their lands, natural wealth and resources was limited. The Committee recommended that the State party systematically consult indigenous peoples in order to obtain their free, prior and informed consent with regard to decisions that may affect their economic, social and cultural rights and ensure that their opinions are respected. It also recommended that the State party make additional efforts to guarantee the right of indigenous peoples to freely dispose of their lands, territories and natural resources.

47. In its concluding observations on the report of Sweden (see E/C.12/SWE/CO/6, paras. 13 and 14), the Committee expressed concern that the Sami people still encountered obstacles to the full enjoyment of their indigenous rights, including access to their ancestral lands and maintenance of their traditional ways of living. It noted that this situation was further exacerbated by the increase in extractive and development projects carried out on or near Sami lands. It therefore recommended that Sweden redouble its efforts to resolve the remaining disputes related to Sami

lands, in particular by ensuring that all Sami enjoy equal access to water and land, by reconsidering its position on the burden of proof in court cases concerning Sami land rights, by ensuring, in law and in practice, that necessary efforts are made to obtain the free, prior and informed consent of all Sami people on decisions that affect them and providing legal assistance in that regard, and by reviewing relevant legislation, policies and practices regulating activities that may have an impact on the rights and interests of the Sami people.

# VII. Regional organizations

## A. Africa

48. On 6 April 2016, the Peace and Security Council of the African Union adopted a decision on the situation in Western Sahara, in which it, inter alia, welcomed the visit of the Secretary-General to Western Sahara in March 2016, noted with deep concern the acute humanitarian situation in which the people of Western Sahara were living, and urged the Security Council to reaffirm the mandate of MINURSO, including the organization of a referendum for self-determination of the people of Western Sahara.[3]

49. The African Union also launched Agenda 2063, its strategic framework for the socioeconomic transformation of the continent over the next 50 years, as well as the first 10-year plan for its implementation, which seeks to accelerate Africa's political, social, economic and technological transformation, while continuing the Pan-African drive for self-determination.[4]

## B. Americas

50. The American Declaration on the Rights of Indigenous Peoples was adopted on 15 June 2016 during the forty-sixth regular session of the General Assembly of the Organization of American States, after 17 years of negotiations. The Declaration recognizes the fundamental right of indigenous peoples to self-determination, to their ancestral territories and to consultation and free, prior and informed consent.[5]

51. The Inter-American Commission on Human Rights released a report on 31 December 2015 regarding human rights protection in the context of extraction, exploitation and development activities, particularly with regard to indigenous peoples, Afro-descendent communities and natural resources.[6] In the report it was noted that the full effectiveness of the right to self-determination was closely related to the exercise of other specific rights of indigenous peoples that guarantee their existence as peoples, among which the right to integrity and cultural identity had a central place. It was further stated that another essential element of the right to

[3] See http://www.peaceau.org/en/article/the-588th-meeting-of-the-au-peace-and-security-council-on-the-situation-in-in-western-sahara.

[4] See http://www.au.int/en/agenda2063.

[5] See http://www.oas.org/en/iachr/media_center/PReleases/2016/082.asp.

[6] See Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development* Activities (2015), para. 239. Available from http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf.

self-determination was the relationship that indigenous peoples have with their lands, territories and natural resources, which is for indigenous peoples a basis for cultural identity, knowledge and spirituality and, in the words of the Inter-American Court of Human Rights, "a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations".[7]

### C. Europe

52. The Council of the European Union, in a statement issued on 20 July 2015, reaffirmed the commitment of the European Union to a just and comprehensive resolution of the Israeli-Palestinian conflict, based on the two-State solution, with the State of Israel and an independent, democratic, contiguous, sovereign and viable State of Palestine, living side by side in peace and security and mutual recognition.[8]

## VIII. Conclusions

**53. The right of peoples to self-determination is enshrined in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which states that all peoples have the right of self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.**

**54. The General Assembly remained active during the reporting period on the right to self-determination, including in the context of the launch of the Sustainable Development Goals in September 2015. In launching the Goals, the General Assembly called for further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right to self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment (see resolution 70/1, para. 35). As outlined in the present report, the General Assembly also addressed the right to self-determination through a number of resolutions dealing in particular with the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It was joined by other major organs of the United Nations, including the Security Council and the Human Rights Council.**

**55. The human rights treaty bodies continued to elaborate the right to self-determination through their jurisprudence, in particular through concluding observations on the periodic reports submitted by States parties to relevant treaties. In particular, the Committee on Economic, Social and Cultural Rights made suggestions regarding legislation and policies of States from all regions which may serve as useful guidance for all States seeking to fulfil their obligations under international law to ensure respect for the right to self-determination.**

[7] See Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Merits, reparations and costs, Judgment of 17 June 2005, para. 146.

[8] See http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-mepp-conclusions/.

56. During the reporting period, special procedures of the Human Rights Council also discussed the implementation of the right to self-determination, in particular as regards the impact of international investment and free trade on the human rights of indigenous peoples and in connection with hazardous substances.

57. All States have an obligation to promote the realization of the right to self-determination and to respect that right, in conformity with the provisions of the Charter of the United Nations. In addition, as noted by the Human Rights Committee in relation to the International Covenant on Civil and Political Rights, the current 168 States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination.[9] Such positive action must be consistent with the obligations of States under the Charter and international law. In particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. Beyond doubt, the effective implementation of the right to self-determination will contribute to greater enjoyment of human rights, peace and stability.

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[9] See Human Rights Committee, general comment No. 12, para. 6 (see HRI/GEN/1/Rev.9 (Vol. I)); see also Committee on the Elimination of Racial Discrimination, general recommendation XXI, para. 3 (see HRI/GEN/1/Rev.9 (Vol. II)).